THE GOVERNMENT OF MALAYSIA

v.

OMAR HJ. AHMAD

HIGH COURT MALAYA, KOTA BHARU
EUSOFF CHIN J
[ORIGINATING MOTION NO. 13 OF 1982]
11 DECEMBER 1982

LAND LAW: *Federal Treasury granted housing loan to respondent - Land charged as security - Repayment by monthly instalments - Defaulted 70 monthly instalments - Application to Collector of Land Revenue for an order of sale of the land - Inquiry by Collector - Order to continue paying monthly instalments and to settle accumulated arrears within a period of 4 years - Whether Collector has power, instead of making an order of sale of the land, to order the respondent to pay his monthly instalment and to grant time to settle the arrears of instalments.*

On 25 August 1972, the respondent was granted a housing loan of RM20,600 through the Housing Loan Division of the Federal Treasury and the amount was increased to RM20,743 on 20 February 1974. As security for the loan, land held under GM. 750 Lot 1096, Mukim of Padang Bongor was charged by the respondent to the appellant. The respondent agreed to settle the loan and interest by monthly instalments of RM154 for a period of 15 years . The respondent defaulted in the payment of the monthly instalments from October 1974 to July 1980, a period of 70 months as no deduction was made from his salary after his secondment to the Lembaga Tembakau Negara in September 1974 from the Information Department.

On 23 July 1980 a notice of demand was made for payment of the whole sum due but the respondent did not settle the amount. On 16 March 1981, the appellant in accordance with s. 254 of the National Land Code issued a notice in Form 16D requiring the respondent to remedy the breach within one month of the service of the notice failing which action would be taken for sale of the land. As the respondent did not comply with the notice, the appellant on 6 July 1981 pursuant to s. 260 of the National Land Code applied to the Collector of Land Revenue, Kota Bharu for an order of sale of the land. On 24 May 1982, the Collector after holding an enquiry and hearing an officer from the Housing Loan Division of the Federal Treasury and the respondent himself, made an order for the respondent to continue to pay the monthly instalments of RM154 and further ordered the respondent to settle the accumulated arrears of monthly instalments which then stood at RM15,565.91 within a period of 4 years from the date of the order, at the rate of RM350 per month.

The appellant appealed against the decision of the Collector, in ordering the respondent to continue to pay his monthly instalments of RM154 towards the loan and to settle the accumulated arrears of RM15,565.91 by monthly payment of RM350 within a period of 4 years instead of making an order of sale of the land.

The issue was whether the Collector of Land Revenue had the power, under s. 263 of the National Land Code to order the respondent to continue to pay his monthly instalments of RM154 towards the loan and grant a period of 4 years for the respondent to settle the arrears of instalments amounting to RM15,565.91 instead of making an order of sale of the land.

Held:

[1] Section 261 of the National Land code imposes a duty on the Collector to order the sale of land to which the charge relates unless he was satisfied that there was no existence of the charge or that there was no breach by the chargor of the agreement complained of or if there was such a breach it had not been caused by the chargor; for example, where the chargor tenders monthly instalments, and the chargee refuses to accept them.

[2] In this case, there was no existence of any cause to the contrary why an order of sale should not have been made by the Collector under s. 263 of the National Land Code. The Collector was, therefore, obliged to make an order of sale of the land as he had no power to make an order requiring a chargor to pay the arrears of money due to the chargee, by instalments.

[3] The appeal was allowed with costs and the Collector's order set aside. The land in respect of which the charge relates was ordered to be sold by public auction by the Collector in accordance with the relevant provisions under Chapter 3, Part 16 of the National Land Code.

[Appeal allowed.]

Legislation referred to:
National Land Code (Cap 3 Pt. 16), ss. 254, 260, 263, (1)

For the appellant - Tee Ah Sing, SFC
For the respondent - Yusof bin Hj. Md. Nor; M/s. Yusof, Idris & Hazzan

JUDGMENT

Eusoff Chin J:

On 25 August 1972, the appellant through its Housing Loan Division of the Federal Treasury granted a loan of RM20,600 to the respondent and the amount was increased to RM20,743 on 20 February 1974. As security for the loan, land held under GM. 750 Lot 1096, Mukim of Padang Bongor was charged by the respondent to the appellant. The respondent agreed to settle the loan and interests by monthly instalments of RM154 for a period of 15 years. The respondent committed a breach of the covenant contained in the charge by not paying the monthly instalments from October 1974 to July 1980, a period of 70 months. A notice of demand was made on 23 July 1980 for payment of the whole sum due since he had committed a breach but the respondent did not settle the amount. On 16 March 1981, the appellant in accordance with s. 254 of the National Land Code sent to the respondent notice in Form 16D requiring him to remedy the breach within one month of the service of the notice failing which action for sale of the land would be taken. The respondent did not comply with the notice. On 6 July 1981, the appellant pursuant to s. 260 of the National Land Code applied to the Collector of Land Revenue, Kota Bharu for an order of sale of the land. On 24 May 1982, after holding an enquiry and hearing an officer from the Housing Loan Division of the Federal Treasury and the respondent himself, the Collector made an order for the respondent to continue to pay the monthly instalments of RM154 and further ordered the respondent to settle the accumulated arrears of monthly instalments which then stood at RM15,565.91 within a period of 4 years from the date of the order, at the rate of RM350 per month.

The appellant has now appealed against the decision of the Collector of Land Revenue. There is no dispute that a valid charge had been executed and that the respondent had committed a breach of the agreement to pay the monthly instalments. The issue is whether the

Collector of Land Revenue, under s. 263 of the National Land Code, has power, instead of making an order of sale of the land, to order that the respondent continue to pay his monthly instalments of RM154 towards the loan, and grant a period of 4 years within which the respondent has to settle the arrears of instalments amounting to RM15,565.91.

From the notes of enquiry taken by the Collector on 24 May 1982, I found that the respondent while working as an officer in the Information Department had been paying the instalments regularly up to 31 August 1974. In September 1974, he was seconded to the Lembaga Tembakau Negara, and since his secondment to that Lembaga to the date of the Collector's enquiry he had not paid any monthly instalment to the appellant. Counsel for the appellant informed me that even to the date of hearing of this appeal, the respondent had not paid up any instalment towards the loan. The respondent at the enquiry before the Collector said that the only reason why no deduction was made from his salary by the Lembaga Tembakau Negara towards the settlement of the loan was possibly due to technical error ('*boleh jadi kerana salah teknik*'). He requested the Collector to allow him to pay the arrears by monthly instalments. There is nothing, however, in the Notes of Enquiry to indicate that the appellant had agreed that the respondent be allowed to pay the arrears by instalments, and I believe that the appellant had never agreed to this arrangement, as otherwise the appellant would not have filed this appeal.

Under the National Land Code, a chargee has a statutory right to request the Collector under s. 260 for an order of sale of the land upon default of any terms of the agreement contained in the charge provided that he has given the requisite notice under s. 254 of the National Land Code. The Collector upon receipt of that request made in Form 16G of the National Land Code is required to hold an enquiry to hear the parties as to why an order of sale of the land should, or should not, be made. At the conclusion of his enquiry if he is satisfied that there exists a charge in respect of the land and that the chargor has committed a breach of the agreement in the charge, the Collector is obliged to make an order of sale of the land to which the charge relates. Section 263(1) of the National Land Code states:

> At the conclusion of any enquiry any under s. 261, the Collector shall order the sale of the land or lease to which the charge in question relates unless he is satisfied of the existence of cause to the contrary.

To my mind, this section imposes a duty on the Collector to order the sale of land to which the charge relates unless he is satisfied that there is no existence of the charge (which he can verify from the land register) or that there is no breach by the chargor of the agreement complained of or if there is such a breach it had not been caused by the chargor; for example, where the chargor tenders monthly instalments and the chargee refuses to accept them.

In this appeal I find that the respondent had been notified by the appellant of the default but he had ignored both the notices sent to him on 23 July 1980 and on 13 March 1981 to remedy the default, and has indeed till the date of the hearing of this appeal, not paid any amount towards the arrears. There is, therefore, no existence of any cause to the contrary why an order of sale should not have been made by the Collector under s. 263 of the National Land Code. The Collector is, therefore, obliged to make an order of sale of the land.

Further, I find that the Collector has no power to make an order requiring a chargor to pay the arrears of money due to the chargee, by instalments.

I therefore allow this appeal with costs and set aside the Collector's order. I order that the land in respect of which the charge relates be sold by public auction by the Collector in accordance with the relevant provisions under Chapter 3, Part Sixteen of the National Land Code.

Also found at [1983] 1 CLJ 242